A **LEMBAGA JURUKUR TANAH SEMENANJUNG MALAYSIA**

v.

TUAN HJ MAIDIN HJ MANAP

B

COURT OF APPEAL, PUTRAJAYA
ZALEHA ZAHARI JCA
SULONG MATJERAIE JCA
T SELVENTHIRANATHAN JCA
C [CIVIL APPEAL NO: W-02-606-2007]
13 JANUARY 2012

PROFESSIONS: *Land surveyors - Payment of fees - Method of - Regulation 99(2), (3)(a), (b), (4) and (5) of the Licensed Land*
D *Surveyors Regulations 1959 - Whether ultra vires the powers conferred by s. 21 of the Licensed Land Surveyors Act 1958 - Whether Regulation enabling Land Surveyors Board to retain one percent of fees for administrative purposes valid and of full legal effect*

E ***WORDS & PHRASES:*** *"regulate the practice - Section 21(2)(b), Licensed Land Surveyors Act 1958 - Meaning and purpose*

WORDS & PHRASES: *"after purpose under this Act" - Section 21(2)(c), Licensed Land Surveyors Act 1958 - Scope of*

F The appellant, the Land Surveyors Board ("the Board") is the governing body of licensed land surveyors practicing in Malaysia and is established pursuant to s. 3 of the Licensed Land Surveyors Act 1958 ("the Act"). The respondent herein applied for the following declaratory orders: that reg. 99(2), (3)(a), (b), (4)
G and (5) of the Licensed Land Surveyors Regulations 1959 ("the Regulations") were *ultra vires* the powers conferred by s. 21 of the Act and accordingly null and void. The respondent also applied for a consequential order for monies deposited with the Board pursuant to reg. 99(2) be paid to him. The High Court had
H granted an order-in-terms of the respondent's application. Hence, this appeal. The issues that arose were (i) whether regs. 99(2), (3), (4) and (5) of the Regulations valid and (ii) whether the Regulation enabling the Board to retain one percent of a licensed land surveyor fees as administrative fees valid.

I

Held (allowing the appeal with costs)
Per Zaleha Zahari JCA delivering the judgment of the court:

(1) There is a nexus between the individual licensed land surveyor, the Survey Department and the Board. The proper construction to be given is that the Board is the link between the work of the individual licensed land surveyor and the Department of Survey and Mapping for the stated purposes for which the Act had been passed and the Regulations made. To "regulate the practice" must be construed to mean to set the standard to which all licensed land surveyors should attain. (paras 27 & 29)

(1a) The rationale behind the prescription of fees in reg. 99(1) was clearly to promote consistency and prevent undercutting of fees among licensed land surveyors, and reg. 99(2) was to ensure that licensed surveyors are assured of payment of the prescribed fees upon completion of tasks. The subsequent regulation providing for the release of the sums deposited at requisite stages of completion was to ensure that licensed land surveyors carry out their work satisfactorily until the stage acceptable for the issuance of final title. All the provisions in reg. 99 were within the powers conferred upon the Board by s. 21 of the Act. (paras 27, 29 & 30)

(2) The legislative intent in making reg. 99 clearly was, for expediency and convenience. It was considered in the public interest to provide that licensed land surveyors would be guaranteed payment of the prescribed fee if they discharged their contractual duties fully with their clients within a prescribed time frame and a client is required to pay the prescribed amount up front by way of deposit with the Board. Clearly payment of the fees from the sums deposited would be contingent upon the licensed land surveyor completing the requisite stage of completion. To monitor this, administrative costs must necessarily be incurred. The words "other purposes under this Act" in s. 21(2)(c) was wide enough to empower the Board to provide for the retention one per cent of the fees as "administrative" fees as provided in reg. 99(3)(a) and (3)(b). Such a regulation was valid and of full legal effect. (para 35)

(3) The High Court Judge had accordingly erred in making the declaratory orders, and then as a matter of course, in directing the sums deposited with the Board under reg. 99(2) of the Regulations to be paid to the respondent. Such a determination of the respondent's entitlement of the sums deposited clearly was not solely one of law but also one of facts. (paras 36 & 37)

Bahasa Malaysia *Translation Of Headnotes*

Perayu, Lembaga Juruukur Tanah ("Lembaga") adalah badan pentadbir juruukur tanah berlesen yang beramal di Malaysia dan ditubuhkan menurut s. 3 Akta Juruukur Tanah Berlesen 1958 ('Akta'). Responden di sini telah memohon untuk perintah pengisytiharan berikut: bahawa Peraturan 99(2), (3)(a), (3)(b), (4) dan (5) Peraturan Juruukur Tanah Berlesen 1959 ('Peraturan') adalah *ultra vires* kuasa-kuasa yang diberikan oleh s. 21 Akta dan sewajarnya batal dan tak sah. Responden juga memohon perintah berikutnya, iaitu supaya wang yang didepositkan dengan Lembaga di bawah per. 99(2) dibayar kepadanya. Mahkamah Tinggi membenarkan perintah menurut terma permohonan responden. Oleh itu, rayuan ini. Isu-isu yang timbul adalah (i) sama ada per. 99(2), (3), (4) dan (5) Peraturan adalah sah dan (ii) sama ada Perintah yang membolehkan Lembaga mengekalkan satu peratus yuran juruukur tanah berlesen sebagai yuran pentadbiran sah ataupun tidak.

Diputuskan (membenarkan rayuan dengan kos)
Oleh Zaleha Zahari HMR menyampaikan penghakiman mahkamah:

(1) Terdapat hubungan di antara individu juruukur tanah berlesen, Jabatan Ukur dan Lembaga. Pentafsiran yang sesuai diberi adalah Lembaga merupakan penghubung antara kerja individu juruukur tanah berlesen dan Jabatan Ukur dan Pemetaan bagi maksud yang dinyatakan untuk Akta yang diluluskan dan Peraturan yang dibuat. Untuk 'mengawal selia amalan' hendaklah ditafsirkan sebagai bererti untuk menetapkan standard yang harus dicapai oleh semua juruukur berlesen.

(1a) Rasional di sebalik penetapan yuran di dalam per. 99(1) adalah jelas untuk menggalakkan keseragaman dan mengelakkan merendahkan yuran di kalangan juruukur tanah berlesen. Peraturan 99(2), iaitu untuk pelanggan mendepositkan

yuran dengan Lembaga, adalah jelas untuk memastikan juruukur berlesen mendapat pembayaran yuran yang ditetapkan sebaik sahaja penyelesaian tugas. Peraturan berikutnya yang menyediakan peruntukan bagi pelepasan jumlah wang yang didepositkan pada peringkat penyiapan jelas adalah untuk memastikan bahawa juruukur berlesen menjalankan kerja mereka dengan betul sehingga peringkat penerimaan pengeluaran hakmilik tetap. Semua peruntukan di dalam per. 99 adalah dalam bidangkuasa yang diberikan kepada Lembaga melalui s. 21 Akta.

(2) Niat perundangan dalam membentukkan per. 99 jelas adalah, untuk kesesuaian dan kemudahan. Ia telah dipertimbangkan demi kepentingan awam untuk menyediakan bahawa juruukur berlesen akan dijamin pembayaran yuran yang ditetapkan jika mereka menjalankan tugas kontrak mereka sepenuhnya dengan pelanggan mereka dalam jangka masa yang ditetapkan dan seorang pelanggan dikehendaki membayar dahulu amaun yang ditetapkan dengan cara deposit dengan Lembaga. Jelas pembayaran yuran daripada jumlah yang didepositkan akan bergantung kepada juruukur berlesen melengkapkan peringkat yang diperlukan. Untuk memantau ini, kos pentadbiran semestinya perlu ditanggung. Perkataan-perkataan "other purposes under this Act" di dalam s. 21(2)(c) adalah cukup luas untuk memberi kuasa kepada Lembaga untuk memperuntukkan pengekalan satu peratus yuran sebagai yuran "pentadbiran" seperti yang diperuntukkan di dalam per. 99(3)(a) dan (3)(b). Peraturan itu adalah sah dan mempunyai kesan undang-undang yang sepenuhnya.

(3) Hakim Mahkamah Tinggi telah khilaf apabila membuat perintah-perintah deklarasi, dan dalam mengarah jumlah wang yang didepositkan dengan Lembaga di bawah per. 99(2) Peraturan-Peraturan dibayar kepada responden. Penentuan hak responden ke atas jumlah wang yang didepositkan jelas bukan semata-mata dari segi undang-undang tetapi juga dari segi fakta.

Case(s) referred to:

Tuan Hj Maidin Hj Manap v. Lembaga Jurukur Tanah Semenanjung Malaysia [2000] 1 LNS 265 HC ***(dist)***

Legislation referred to:
Licensed Land Surveyors Act 1958, ss. 3, 9, 10, 13, 14, 15, 16(1), (2), (3), (4), 21(1)(c), (2)(b), (c)
Licensed Land Surveyors Regulations 1959, regs. 99(1), (2), (3)(a), (b), (4), (5), 100
National Land Code, ss. 396, 397(1), 398(1), (2), (3), (4), 398A, 409A

For the appellant - Abu Bakar Jais; M/s Hisham, Sobri & Kadir
For the respondent - Zainur Zakaria (Kenneth Gomez with him); M/s Sabarudin Othman & Ho

Reported by Suhainah Wahiduddin

JUDGMENT

Zaleha Zahari JCA:

[1] The Land Surveyors Board, (the appellant in this appeal/ the respondent in the court below) subsequently referred to as "the Board", was established pursuant to s. 3 of the Licensed Land Surveyors Act 1958 ("the Act"). The Board is the governing body of licensed land surveyors practicing in Malaysia.

[2] *Vide* originating summons filed on 30 June 2004 the respondent (the applicant in the court below) applied for the following declaratory orders: that regs. 99(2), (3)(a), (3)(b), (4) and (5) of the Licensed Land Surveyors Regulations 1959 ("the Regulations") were *ultra vires* the powers conferred by s. 21 of the Act and accordingly null and void. The respondent also applied for a consequential order for monies deposited with the Board pursuant to reg. 99(2) be paid to him.

[3] On 3 July 2007 the learned High Court Judge granted an order-in-terms of the respondent's application. Hence this appeal.

The Law

(a) The Licensed Land Surveyors Act 1958

[4] The Preamble of the Act states – "An Act relating to the licensing and control of land surveyors and of matters connected therewith". The Act came into force on 1 May 1958. The constitution of the Board is set out in s. 4 and consists of the Director General of Survey (Chairman), the Deputy Director General of Survey (Deputy Chairman), a Director of Survey appointed by the Minister and three licensed land surveyors registered under s. 9 appointed by the Minister.

[5] Sections 9 and 10 of the Act deal with registration and licensing. The powers of a licensed land surveyor are as prescribed in s. 13 of the Act. On completion of a title survey the licensed land surveyor is required to lodge the survey plan with the Government Survey Department. The licensed land surveyor who signs the survey plan must deposit such plan together with the relevant field books, calculation sheets and survey data with the Survey Department and all such documents shall, if such plan is approved by the Director General of Survey or such officer appointed by him to approve the same on his behalf, become the property of the Government and shall be filed as permanent survey records (s. 14).

[6] Section 16(1) of the Act empowers the Director General of Survey or any authorized Government surveyor, if he deems fit, to carry out field work and office checks on the title survey work of a licensed land surveyor and, by notice in writing, instruct a licensed land surveyor to correct at his own expense within a time specified in the notice any error made by him (s. 16(2). Such a notice must be sent not more than twelve months after the date on which the relevant survey plan was deposited with the Survey Department in s. 14. In the event of the licensed land surveyor refusing or neglecting to correct such errors within the time specified, the Director General is empowered to undertake such correction departmentally and to cover the whole costs of such correction from the licensed land surveyor concerned (s. 16(3)). If the licensed land surveyor fails to refund the costs of the correction survey within fourteen days of receipt of the statement of cost the Director General is authorized by s. 16(4) to report such failure to the Board for disciplinary action to be taken against him.

[7] Sections 21(1) and (2) of the Act enable the Board with the approval of the Minister to make regulations. This provision states as follows:

> 21 (1) Subject to this Act the Board may with the approval of the Minister make regulations to prescribe anything which under this Act is required to be prescribed and generally to carry out the objects and purposes of this Act.
>
> (2) In particular and without prejudice to the generality of the foregoing, such regulations may
>
> (a) prescribe the conditions under which persons desirous of becoming licensed land surveyors under this Act may so qualify;

A (b) regulate the practice and conduct of licensed land surveyors;

(c) prescribe fees for registration, annual licenses, examination and other purposes under this Act;

B (d) ...

(e) ...

(f) ...

C *(b) The Licensed Land Surveyors Regulations 1959*

[8] In exercise of the powers conferred by s. 21 of the Act the Board had, with the concurrence of the Minister, made the Licensed Land Surveyors Regulations 1959.

D **[9]** The reg. 99 which is applicable and in issue in this case is that as amended by P.U. (A) 177/74 and P.U. (A) 27/80. This regulation sets out the fees of a licensed land surveyor and regulates the collection and payment of such fees. The fees payable for services rendered by a licensed land surveyor is that E as prescribed in the Thirteenth Schedule (reg. 99(1)). A client is required to deposit the prescribed fees with the Board (reg. 99(2)). The Board is then entrusted with the duty of disbursing the fees which had been deposited by the client with them to be released to the licensed land surveyor upon completion of specified stages F and subject to such drawings being verified to be in compliance with the Department of Survey requirements (reg. 99(3)(a) and (3)(b)). Pursuant to reg. 99(3)(a) and 99(3)(b) the Board is also conferred with the power to retain one percent of the fees deposited as "administrative" fees. Regulation 99 is reproduced G below for case of reference.

99 (1) Every licensed land surveyor making a title survey shall charge fees as prescribed in the Thirteenth Schedule hereto.

H (2) The fee shall be deposited with the Board by the client before the title survey is carried out.

(3) (a) In respect of a title survey of not exceeding ten lots, the Board shall pay to the licensed land surveyor eighty-I one percent of the fee, after retaining one percent of the fee for administrative purposes, on completion of the title survey and upon deposit into the Survey Department of the relevant documents and a claim for payment of the

fee; and shall pay the balance of eighteen percent of the fee either within a period of three months from the date of such deposit or after the survey plan has been approved by the Surveyor-General or other person authorized by him, whichever is the earlier.

(b) In respect of a title survey of exceeding ten lots, the Board shall, after retaining one percent of the fee for administrative purposes, pay to the licensed land surveyor, in such sums and manner as the Board may determine during the progress of the work and upon a claim for payment, sixty percent of the fee on completion of the field work; and shall pay a further twenty-one percent of the fee upon deposit into the Survey Department of the relevant documents, and a claim for payment of the fee; the balance of eighteen percent of the fee shall be paid either within a period of three months from the date of such deposit or after the survey plan has been approved by the Director-General of Survey or other person authorized by him, whichever is the earlier.

(4) Where a title survey has been commenced by a licensed land surveyor and completed by another licensed land surveyor or surveyors the payment of the prescribed fee due in respect of the title survey shall be calculated on the portion of work completed by each licensed land surveyor accordingly.

(5) In the event of any dispute as regards payment by apportionment, the aggrieved licensed land surveyor shall submit a statement in writing to the Board setting out the grounds upon which his claim is based and if the Board fails to settle the matter by mutual agreement, it shall appoint an arbitrator to arbitrate in accordance with the provisions of the Arbitration Act, 1952.

(c) The National Land Code

[10] The respondent counsel had in his submissions before us also made reference to the following provisions of the National Land Code (the Code).

[11] Section 397(1) states as follows:

397 (1) The Director of Survey and Mapping shall exercise general control and supervision over all other Survey Officers.

A (2) the Director of Survey and Mapping shall be subject to the general control and supervision of the Director General of Survey and Mapping, who shall act in accordance with such directions as to policy and as to the exercise of his powers as may be given by the Minister.

B **[12]** The powers of the Director of Survey are as provided in 398(1), (2) and (3) of the Code. Section 398(4) then provides as follows:

398. (4) The powers conferred on the Director of Survey and
C Mapping by subsections (1), (2) and (3):

(a) may be exercised on behalf of the Director of Survey and Mapping by any Survey Officer or licensed land surveyor; and

D (b) ...

[13] Reference was also made to two other provisions of the Code which has reference to licensed land surveyors ie, ss. 398A and 409A of the Code. Section 398A was inserted by National Land Code (Amendment) Act 1992 (Act A 832) and came into
E force on 1 January 1993. Section 409A was inserted by National Land Code (Amendment) Act 1985 (Act A 615) which came into force on 30 May 1985. This section was subsequently amended by National Land Code (Amendment) Act 1992 (Act A 832) which came into force on 1 January 1993. Both of these
F provisions are reproduced for ease of reference.

398A (1) Where any licensed land surveyor carries out a survey of any land for the purposes of this Act, he shall complete the survey within the stipulated time and deposit all the survey plans
G together with the relevant field books, calculation sheets and other survey data with the Director of Survey and Mapping within such period as may be specified by the Director of Survey and Mapping.

(2) The Director of Survey and Mapping may, by a notice
H in Form 29D, require any licensed land surveyor who has not completed the survey to produce any document relating to the survey which is in his possession or control.

(3) Where any licensed land surveyor fails to complete any survey, without any reasonable cause, the Director of Survey and
I Mapping shall complete or cause to be completed the survey and recover the costs of the completion of the survey from such surveyor.

409A. Where under this Act, any survey fees are chargeable, such survey fees shall not be chargeable where the land is to be surveyed by a licensed land surveyor and a certificate from the Land Surveyors Board certifying that the survey of the land will be carried out, is furnished.

The Respondent's Application

[14] The respondent in his affidavit filed in support of the application averred that he has been registered with a license to practice as a land surveyor under s. 9 of the Act since 1960.

[15] No challenge was made as to the validity of reg. 99(1), only reg. 99(2), (3), (4) and (5). In so doing it is to be inferred that the respondent accepts that the Board is empowered to set out the fees of a licensed land surveyor as set out in reg. 99(1).

[16] The respondent's complaint is targeted against the procedure set out in the subsequent regulations requiring the prescribed fees to be deposited by a client with the Board, and its release to a licensed land surveyor upon specified stages of completion, and the regulation enabling the Board to retain one per cent of the fees "for administrative purposes".

[17] Paragraphs 5, 6 and 7 of the respondent's affidavit filed in support of the application states as follows:

5. Dalam haluan profesion saya, saya telah membuat pelbagai kerja tinjauan dan kerja-kerja yang masih belum di selesaikan di mana wang telah di simpan dengan Lembaga tersebut yang telah dihuraikan dan dijadualkan dan jadual tersebut dilampirkan di sini dan ditandakan sebagai ekshibit "HM-2". Oleh yang demikian saya menyatakan bahawa RM815,567.74 di mana keseluruhannya adalah yuran di simpan dengan pihak Defendan, semasa memfailkan Saman Pemula ini.

6. Saya telah menyimpan yuran saya yang telah dibayar oleh klien-klien individu saya berkaitan dengan kerja-kerja tinjauan tersebut dengan pihak Defendan menurut Peraturan 99 (c) Peraturan-Peraturan tersebut.

7. Defendan sekarang menyimpan 1% daripada yuran tersebut sebagai caj pentadbiran bagi tujuan pentadbiran dan baki tersebut dibayar kepada saya secara progresif bergantung kepada tujuan kerja-kerja tinjauan yang telah diselesaikan dan menurut Peraturan-peraturan 99 (3a), 99(3b), 4 dan 5.

[18] Paragraphs 12 and 13 of the respondent's affidavit then states as follows:

> 12. Saya menyatakan bahawa keperluan dalam Akta tersebut adalah hanya s. 14 menyatakan bahawa saya perlu menyimpan geran tinjauan yang lengkap dengan Jabatan Tinjauan (Survey Department) serta semua kertas kiraan buku-buku lapangan dan data tinjauan yang relevan bagi kelulusan Director General of Survey dan bukan Defendan.
>
> 13. Selanjutnya tidak terdapat peruntukan dalam Akta tersebut yang menyatakan bahawa seorang Jurukur Tanah perlu menunjukkan kepada Defendan buku-buku lapangan yang relevan dan kerja yang telah diselesaikan selepas penyelesaian 60% daripada kerja tinjauan tersebut.

The issues raised in this appeal will now be dealt with in turn.

1st Issue: Whether regs. 99(2), (3), (4) And (5) Of The Regulations Valid?

[19] The learned High Court Judge read both the Act and the Regulations restrictively. According to her the Board's powers were limited to the prescription of fees for registration and license and the conduct and discipline of land surveyors. The learned judge was not persuaded with the argument that the words in the Preamble, nor that as provided in s. 21(1) of the Act, being wide enough enabling the Board to require the prescribed fees to be deposited with the Board. Her reasoning in arriving at such an interpretation was because s. 21(2) did not expressly provide for the same but only provided for the collection of fees relating to the registration, annual license and examinations. The learned judge was of the view the regulation, requiring clients to deposit the prescribed fees and disbursement thereof upon completion of requisite stages of licensed land surveyors did not fall within the ambit of the phrase "to regulate the practice and conduct of licensed land surveyors" in the Preamble nor within the phrase "and other purposes under this Act".

[20] The appellant counsel's submission on this issue was this. The Act is a specific law regulating the practice of the licensed land surveyors. Effect must be given to the word "control" in the Preamble to mean "authority to direct, restrict or regulate". The words "and of matters connected therewith" must be construed to mean that it is not to be confined to matters which had been expressly specified.

[21] The enabling regulation making power of the Board under s. 21(1) must of course necessarily relate to the objects and purposes specified in the Preamble. The appellant's counsel submitted that reg. 99 read as a whole was in accord with the purposes of the Act. Regulation 99 did not in any way add to or depart from that which the Legislature had intended in passing the Act. The Board's power to make regulations relating to "fees", according to the appellant's counsel, is not to be construed to be limited for the purpose of registration, annual license and examination. He urged the court to note that s. 21(1)(c) did not end with the word "examination" but included the phrase "and other purposes under this Act". He was of the view that effect must be given to the inclusion of this phrase, "and other purposes under this Act". The inclusion of this phrase must be construed to mean that the Board had the power to make regulations in respect of matters ancillary and incidental to the specific provisions. The regulation providing for clients to deposit the prescribed fees with the Board in the first instance, and its release progressively upon the contracted work being performed by the licensed land surveyor, was clearly to ensure that licensed land surveyors perform their contractual duties, such that the good name of the profession is assured. Such a regulation was, according to the appellant's counsel, within the ambit of the general words in the Preamble to "control of land surveyors and of matters connected therewith".

[22] The respondent counsel took issue. The respondent counsel advanced two reasons in the court below and on appeal before us, as to why reg. 99 should be declared invalid. The duty of a licensed surveyor to complete a survey has been extensively prescribed in the Code and in the Act. According to the respondent's counsel the power to ensure the duty to complete a survey has been conferred on the Director of Survey pursuant to s. 398A read together with s. 396 and 409A of the Code and ss. 14, 15 and 16 of the Act. He submitted that It could not have been the intention of the Legislature to also confer such a power on the Board. The respondent's counsel was of the view that reg. 99 usurps the power of the Director of Survey under s. 398A of the Code.

[23] The scope of the powers of the Board to make regulations under s. 21 according to the respondent counsel must be confined to matters of professional conduct and practice such that as provided in reg. 101 – Code of Professional Conduct – Part V1.

Reference was then made to the High Court decision of *Tuan Hj Maidin Hj Manap v. Lembaga Jurukur Tanah Semenanjung Malaysia* [2000] 1 LNS 265, where the disciplinary action taken against the licensed land surveyor concerned had been successfully challenged.

Decision

[24] Our duty in a case such as this is to examine the mischief which the statute was intended to remedy, then to examine, not only the enacting provisions, but its Preamble and other statutes in *pari materia*.

[25] The intention of the legislature in passing the Act was clearly in recognition that survey in connection with land transactions should be at the expense of parties and not at Government's expense and to license suitably qualified persons to undertake survey for title. The Preamble to an Act explains the reason or motive for and the object sought to be accomplished by the enactment of the statute. We are mindful that a Preamble cannot either enlarge or abridge the scope and purpose of an Act.

[26] Our reading of the case *Tuan Hj Maidin Hj Manap v. Lembaga Jurukur Tanah Semenanjung Malaysia* [2000] 1 LNS 265 referred to by the respondent's counsel is that it can be distinguished on facts. The appellant in that case (we understand that he is also the respondent in this case) was subjected to disciplinary action by the Board for failure to complete survey work in time on the ground that reg. 100 of the Regulations had been infringed. We note that the validity of reg. 99 was not challenged and accordingly was not an issue in that earlier case. In that earlier case the respondent had successfully challenged the disciplinary action taken against him on the ground that it was premature. We are of the view that the decision in that earlier case is of no assistance to us in making a considered decision in this case as the issue raised here was a completely different one.

[27] From our reading of the Act and the provisions of the Code referred to us, it is clear that there is a nexus between the individual licensed land surveyor, the Survey Department and the Board. In our considered opinion the provisions of the Code referred to by the respondent's counsel (ie, s. 398A, 396 and 409A) in relation to licensed land surveyors, is that they are consistent, harmonious and compatible with the provisions of the Act. Giving the provisions of the Code referred to by the respondent's counsel and the Act a harmonious construction, we

are not in agreement with the respondent counsel's submission that there was a usurpation of the Director of Survey's powers under the Code. We take the view that the newly inserted provisions referred to by the respondent's counsel were supplemental to the provisions of the Act which had long been in force. Giving the provisions referred to their ordinary and plain meaning, we are of the view that the proper construction to be given is that the Board is the link between the work of the individual licensed land surveyor and the Department of Survey and Mapping for the stated purposes for which the Act had been passed and the Regulations made.

[28] The commonly used technique had clearly been adopted in this case, ie, to confer a general power and then, without prejudice to the generality of this power, to confer the power to make regulations for certain specific heads. Regulations may be considered to be valid if it is justified under the general power even if it does not fall within the scope of any specific head. In adopting such a formula the purpose of specific heads is only illustrative, and the range and scope of the general power to make regulations is not thereby restricted.

[29] To "regulate the practice" must be construed to mean to set the standard of which all licensed land surveyors should attain. The rationale behind the prescription of fees in reg. 99(1) (which was unchallenged) was clearly to ensure that reasonable fees are paid to licensed land surveyors, to promote consistency and prevent undercutting of fees among licensed land surveyors. The intention of reg. 99(2), for clients to deposit the same with the Board, was clearly to ensure that licensed surveyors are assured of payment of the prescribed fees upon completion of the tasks they have been appointed to undertake. The subsequent regulation providing for the release of the sums deposited at requisite stages of completion clearly was to ensure that licensed land surveyors carry out their work satisfactorily until the stage acceptable for the issuance of final title. In other words the prescribed procedure relating to the release of the sums was in accord with the legislature's intention that licensed land surveyors perform their duties professionally, efficiently and within the prescribed time- frame.

[30] Our conclusion on the 1st issue is that all of the provisions in reg. 99 were within the powers conferred upon the Board by s. 21of the Act.

A **2nd Issue: Whether The Regulation Enabling The Board To Retain One Per Cent Of A Licensed Land Surveyor Fees As Administrative Fees Valid?**

[31] The High Court ruled that the retention of one per cent of
B the fees of a licensed surveyor was a "levy" and *ultra vires* the power conferred by s. 21(1) of the Act and accordingly null and void. Consequentially, the learned judge then directed the sums deposited with the Board pursuant to reg. 99(2) be paid to the respondent.

C **[32]** The rival arguments presented before us on this issue are as follows. The appellant's counsel stressed the fact that licensed land surveyors were required to perform the duties they have contracted with their clients in accordance with the provisions of
D the Act, before the fees which had been deposited with the Board is paid to them. It cannot be denied that administrative charges must necessarily be incurred. The appellant counsel submitted the words "other purposes under this Act" in s. 21(2)(c) of the Act was wide enough to empower the Board to provide for the
E retention of one percent of the fees as administrative fee as provided in reg. 99(3)(a) and (3)(b). Such a regulation was accordingly valid and of full legal effect. He submitted the judge therefore erred in directing the sum deposited with the Board pursuant to reg. 99(2) be paid to the respondent.

F **[33]** The respondent counsel in reply submitted that the imposition of an administrative fee of one per cent does not fall within the ambit of the words "to regulate the practice and conduct of the Licensed Land Surveyors". According to him, being fiscal in nature, there must be an express provision in the Act
G enabling the Board to do so. As there is no such express provision in s. 21, it must be construed that the Board is not empowered to do so. The High Court Judge was therefore right in declaring such a levy to be invalid.

H **Decision**

[34] Our earlier decision on the 1st issue, that there is a co-relationship between the fees deposited by a client, the duty of a licensed land surveyor to complete a survey, and the Board's duty
I to overseer due compliance, must of course be taken into consideration in determining the 2nd issue.

[35] The legislative intent in making reg. 99 clearly was, for expediency and convenience. It is considered in the public interest to provide that licensed land surveyors would be guaranteed payment of the prescribed fee if they discharged their contractual duties fully with their clients within a prescribed time frame and a client is required to pay the prescribed amount up front by way of deposit with the Board. Clearly payment of the fees from the sums deposited would be contingent upon the licensed land surveyor completing the requisite stage of completion. It cannot be denied that to monitor this, administrative costs must necessarily be incurred. In our considered opinion the words "other purposes under this Act" in s. 21(2)(c) was wide enough to empower the Board to provide for the retention one per cent of the fees as "administrative" fees as provided in reg. 99(3)(a) and (3)(b). Such a regulation in our view was valid and of full legal effect.

Conclusion

[36] To sum up, we hold that not only was reg. 99(1) (as conceded by the respondent) to be valid, but also regs. 99(2), (3)(a), 3(b), (4) and (5) to be also valid and of full legal effect. The learned High Court Judge had accordingly erred in making the declaratory orders which she did, and then as matter of course, in directing the sums deposited with the Board under reg. 99(2) of the regulations to be paid to the respondent. Such a determination of the respondent's entitlement of the sums deposited clearly was not solely one of law but also one of facts. For the above reasons the appeal was allowed with costs. We awarded costs here and below in the sum of RM15,000 to the appellant. The deposit to appellant.